

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

Bail Appl..No. 4383 of 2007()

CRIME NO.212/06 OF THE KUTHIATHODE POLICE STATION

PETITIONER

VIVEK JOY, S/O K.K.JOY,
FLAT NO.373-B, ANAND APARTMENTS,
KALIKULAM, CHERTHALA P.O., ALAPPUZHA.

BY ADV. SRI.DILEEP P.PILLAI
SRI.R.JAYACHANDRAN
SRI.BIJU VARGHESE ABRAHAM

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY P.P. SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 20/07/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R. BASANT, J.

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Dated this the 20th day of July, 2007

ORDER

The petitioner faces allegations, inter alia, under Sec.376 of the IPC. He is alleged to have kidnapped a girl aged about 15 years and committed rape on her. A crime was registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. It is prayed that directions under Sec.438 of the Cr.P.C. may be issued in favour of the petitioner.

3. The learned Public Prosecutor opposes the application. The crime was registered as early as on 3/10/06. The petitioner had applied for anticipatory bail before the learned Sessions Judge and by order dated 28/4/07, the learned

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Sessions Judge had allowed the said petition subject to conditions. The petitioner has not complied with the said directions. Suppressing the fact that the learned Sessions Judge, Alappuzha, had passed an order of anticipatory bail dated 28/4/07 in CrI.M.P.No.1162/07, this application for anticipatory bail has been filed before this Court, it is submitted. In these circumstances, the extraordinary equitable discretion under Sec.438 of the Cr.P.C. may not be invoked in favour of such a petitioner, submits the learned Public Prosecutor.

4. Without going into details, I am satisfied that the petitioner has not come to this Court with sufficiently clean hands to justify the prayer for invocation of the extraordinary equitable discretion. The learned counsel submits that the counsel was unaware of the earlier application filed by the petitioner. But it is difficult for me to assume that the petitioner did not know about the same. This bail application has been filed with a specific assertion in the petition that no earlier application had been moved before any court.

5. I am, in these circumstances, satisfied that the petitioner is not entitled to invoke the discretion under Sec.438 of the Cr.P.C. He must now resort to the ordinary and normal procedure of surrendering before the Investigating Officer or

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the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

6. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge